

PROPOSED AMENDMENT TO RULES CONCERNING APPEALS OF MMS ORDERS.
(Federal Register dated January 12, 1999)

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The new proposed ruling extends the time in which to appeal from the previous 30-days allowed to 60 days after MMS serves the Notice of Order, with no exceptions or grace periods. The extension does help by allowing more time for the appellant to gather information to include with their Statement of Reasons, but I submit, as my opinion, that the time limit should be at least 90 days in which to file the appeal in comparison to the proposed deadline of 33 months allowed to MMS to complete all levels of their administrative review. The appeal process is a time-consuming ordeal for both sides, but MMS will have access to all records applicable to the appeal plus more manpower compared to the time and effort necessary for one, maybe two, people who would be involved in the research in a small business office.

I would like to respond to the request for comment on whether the current "two-level" appeal process should be retained, with amendments. My opinion, based on the information provided in the Proposed Rules for Appeals of MMS Orders, is that MMS has answered this quite clearly by admitting on page #1930 that the current appeals process is in need of substantial reform. The problems listed seem to be in line with those I would have listed myself, specifically the "lack of timely resolution". The few appeals that I have had to make during the years that I have processed and researched the various MMS bills (in which I felt that the amount assessed was incorrect) were not taken care of quickly enough, considering the amount I was appealing, most of them less than \$500. In October, 1993, I received an ABIL in the amount of \$34,047.51, which involved rejected lines for allowances taken. I did not argue that the mistake was not mine, but only that MMS had not notified me of this incorrect report until almost a whole year after I filed it. When I asked the MMS contact why I had not received an explanation letter giving the reason MMS rejected my report, she replied that their department was back-logged during the year 1992 when my report was received and that a new person began processing all our company reports in October of 1993. I also asked if MMS had a certain length of time to notify payors of their errors and was told that "unfortunately the ultimate responsibility of a correct and timely report falls on the payor regardless of how long it takes MMS personnel to catch the error." She even admitted that this was a major complaint against MMS. We paid this bill "under protest" because of the circumstances for which I won't take time to list, and sent in our letter of appeal in January, 1994. This appeal was finally resolved when MMS agreed to allow us to recoup the major portion of the assessment in their letter to us dated April, 1995. There were quite a few people involved in the decisions coming from MMS, but the fact is: the current appeal process does need major reconstruction!

The method of filing these appeals, (which you have also requested comment on) should possibly depend on the amount of supporting documents involved in the required Preliminary Statement of Issues. If there are not too many documents involved, MMS could allow the appellant to fax the necessary copies and await a return fax verifying the receipt of this appeal and also sending the required docket number. I am not familiar enough with the internet or the e-mail process to comment on either of these.

On page #1936 under Section 4.907, the modification made by the Secretary in his September 22, 1997 letter to the Royalty Policy Committee (RPC) states that appellants must "specifically identify their legal and factual disagreements with the MMS action, but that it need not be a legal brief or have as much detail as would be required in the Statement of Reasons, which would be sent in later." Then he further emphasizes that the appellant's Preliminary Statement of Issues should ensure productive, well-informed record development and settlement efforts. I feel that the appellants who have the ability to quote the laws and regulations to explain their "legal position" in their appeal would have an unfair advantage over those of us who did not go to law school. I would just like to request that this new appeal process take into consideration the small business employee who has access only to the MMS Federal Regulation manuals!

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I would like to protest, as a matter of record, the "processing fees" which are also pending under this new proposal. I feel that it is grossly unfair to charge a fee to members of industry for the "service" we would receive from MMS when we file an appeal. Your "reasonableness factors" listed on page 1952 of the proposal mention the "monetary value of the rights or privileges sought by the applicant" and "the public service provided". If these things were true, why is MMS just now trying to recover the costs of processing appeals? The "efficiency of the government processing" involved in this process is questionable or else there would not be a pending proposal to make changes to the system! Also, according to Section 4.972, MMS would be the one obviously benefiting by the "default decision provision", which says that any appeal that has not been decided by the expiration of the 33-month deadline would automatically be in favor of the Secretary, if the amount is over \$10,000. What's to keep MMS from extending their processing time to conveniently last past the 33-month deadline? I don't see how MMS says the appellant can benefit from a protest of an assessment or an order to pay issued by MMS when we have the "burden of proof" on our shoulders without the benefit of or access to the "efficient government records". My opinion, therefore, is that the monetary value of an appeal is only as much as MMS allows to the appellant.